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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Nos. 1200 to 1205.

In the Matter of

CHICAGO RAILWAYS COMPANY and CHICAGO CITY RAILWAY COMPANY,

Debtors.

CHARLES H. WORCESTER, et al., NAHUM BIRNBAUM, et al., JAMES A. COLE, et al.,

Petitioners,

vs.

CHICAGO TRANSIT AUTHORITY, et al.,

Respondents.

MOTION BY RESPONDENTS THAT DISPOSITION OF PETITION FOR CERTIORARI BE ADVANCED ON ACCOUNT OF THE PUBLIC INTEREST; AND FOR OTHER RELIEF.

WILLIAM J. FRIEDMAN and MAURICE ROSENFIELD,
Counsel for Chicago City Railway Company and Calumet and South Chicago Railway Company First Mortgage Bondholders Protective Committees.

TAPPAN GREGORY and ROBERT L. HUNTER,
Counsel for Chicago City and Connecting Railways Collateral Trust Bondholders Protective Committee.

WERNER W. SCHROEDER,
Special Counsel for Chicago Transit Authority.

HENRY F. TENNEY,
Counsel for Chicago Railways Company First Mortgage Bondholders Protective Committee.

CARL R. LATHAM,
Counsel for Chicago Railways Company Consolidated Mortgage Series A Bondholders Protective Committee.

J. ARTHUR MILLER,
Counsel for Chicago Railways Company Purchase Money Mortgage Bondholders Protective Committee.

CHAMPLIN-SHEALY COMPANY, CHICAGO 268

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To the Honorable, The Supreme Court of the United States:

Now come respondents, Chicago Transit Authority, a municipal corporation, and Albert W. Harris, Harry C. Hagerty, Harry M. Addinsell, M. H. MacLean and Thomas B. Butler, as members of Chicago Railways Company First Mortgage Bondholders Protective Committee.

Frank M. Gordon, William McCormick Blair, John W. Esmond, Stanley Field, William C. Freeman and Charles H. Thorne, as members of Chicago City Railway Company and Calumet and South Chicago Railway Company First Mortgage Bondholders Protective Committees;

John E. Blunt, Walter S. Brewster, John A. Chapman and Percy B. Eckhart, as members of Chicago Railways Company Consolidated Mortgage Series A Bondholders Protective Committee;

Charles F. Axelson, A. V. Morton and Ores E. Zehr, as members of Chicago Railways Company Purchase Money Mortgage Bondholders Protective Committee; and

Martin Lindsay, C. F. Glore, W. Findlay Downs and A. R. Bone, as members of Chicago City and Connecting Railways Collateral Trust Bondholders Protective Committee; by their respective counsel, and

Move the Court:

(a) That the disposition of the Petition for Certiorari herein be advanced on account of the public interest involved;

(b) That respondents be given leave to file instanter ten (10) printed copies of the opinion of the Circuit Court of Appeals.

As grounds for this motion, respondents show the following reasons:

1. This litigation, involving the Chicago Surface Lines which operate the major mass transportation system in Chicago, has been pending in the Federal courts for over twenty years. During that time five major attempts at reorganization have been made, all of which have failed. The plan now before the court is the sixth major effort to solve Chicago's local transit problems. It involves the

sale of the operating properties and certain other assets at a fair upset price, pursuant to Section 216 of the Bankruptcy Act. It is contemplated that the properties will be purchased by Chicago Transit Authority, a public municipal coporation created in 1945 for the purpose of operating an integrated transporation system in Chicago, or by a higher bidder. The plan was approved and confirmed by the District Court for the Northern District of Illinois; and on appeal the judgments of approval and confirmation were affirmed on January 4, 1947, by the Circuit Court of Appeals for the Seventh Circuit.

2. The objectors to the plan (some of whom are petitioners) filed no petition for rehearing and made no application to stay the mandate, which was transmitted to the District Court in due course.

3. After waiting two months, during which petitioners took no steps to cause a record to be prepared and gave no intimation of an intention to file a petition in this court, the District Court, in compliance with the mandate of the Circuit Court of Appeals and its own prior orders, entered an order directing the sale of the properties in accordance with the plan. April 22, 1947 was fixed as the date of sale; and publication was ordered to be made once each week during a thirty-day period. This publication was begun in the Chicago Journal of Commerce on the morning of March 21, 1947, and in the Wall Street Journal, New York, on the morning of March 22, 1947. The expense of this publication has been large, namely, about $4282.80 (plus $3775.60 for the publication of the sale of the Rapid Transit properties, hereinafter mentioned).

4. On the evening of March 21, 1947, respondents received the first intimation that a petition might be filed when one of the attorneys for petitioners telephoned coun-

sel for Chicago Transit Authority to discuss preparation of a record. Even then said petitioners' counsel would not state definitely whether or not a petition would be filed. Not until March 27 and March 28, 1947, respectively, were respondents served with notices that petitioners were causing a record to be prepared and transmitted to this Court. The petition herein was filed on April 3, 1947, the last day, save one, permitted by statute.

5. At the time of the entry of the order of sale Chicago Transit Authority submitted a time schedule which it was hoped could be accomplished. It was in substance:

> *First,* that the order of sale of the Rapid Transit properties (another large transportation system, operating an elevated railway in Chicago, which is also within the jurisdiction of the Bankruptcy Court) be entered on March 19, 1947.
>
> *Second,* that notices of sale begin to be published in Chicago and New York on or before March 22, 1947.
>
> *Third,* that the date of both sales be fixed as April 22, 1947.
>
> *Fourth,* that the Transit Authority's bids (if the best bids) be approved and the sales confirmed on May 3, 1947.
>
> *Fifth,* that the Transit Authority begin to advertise its bonds for sale on May 15, 1947.
>
> *Sixth,* that the Transit Authority sell its revenue bonds on June 3, 1947.
>
> *Seventh,* that during the month of June all documents of transfer and conveyance of the Plan Properties be prepared and agreed upon, the bonds printed, signed, and delivered; and that the money be paid for the properties on June 30th, and the properties transferred as of 12:01 A. M. July 1, 1947.

6. Respondents realize, of course, that if the petition is allowed, this time schedule must be abandoned. On the other hand, if the petition is denied, its denial at the earliest possible time could make possible the keeping of this

schedule, which is important for this reason: The banking groups interested in underwriting and marketing the Authority's revenue bonds have advised that the month of June is a favorable period market-wise for the sale of these bonds; whereas the summer months, July, August and early September, are looked upon as unfavorable for marketing this, or any other, large issue of bonds.

7. Petitioners, because of the lateness of filing their petition, have not caused to be printed a record of the proceedings of the Circuit Court of Appeals, but have filed here printed copies of those parts of the District Court proceedings which were printed for the Circuit Court of Appeals. Respondents firmly believe that the record now before the Court is adequate for the disposal of the petition, if this Court has before it printed copies of the opinion of the Circuit Court of Appeals. Respondents have obtained from the Clerk of that Court ten printed copies of the opinion, which have been lodged with the Clerk of this Court, and which respondents ask leave to file.

8. The public interest in the subject matter of these proceedings, and in the prompt disposition of the petition, is very great. After receivership and bankruptcy proceedings had been pending over eighteen years and after five attempted reorganizations had failed, the District Court urged the Governor of Illinois and the Mayor of Chicago to do all they could to agree on a solution of the traction problem. As a result of that suggestion, the Governor and Mayor recommended the creation of a metropolitan transit authority. The General Assembly, adopting that recommendation, created Chicago Transit Authority, a municipal corporation, with power to acquire and operate a mass transportation system in the metropolitan area of Chicago and to issue its revenue bonds to pay for the cost of such acquisition. Exemption from taxation was

granted as an aid to the financial strength of the Authority. The creation of the Authority as well as the tax exemption have been declared valid by the Supreme Court of Illinois (*People* v. *Chcago Transit Authority,* 392 Ill. 77).

The District Court, in its opinion at the time of approval of this plan, remarked:

> "Over the years reorganization of these properties was retarded first by one cause and then by another, by the depression, by inability to agree upon ordinances or plans, and by various acts or decisions of the City, the security holders, and the Commerce Commission. The interests of the security holders, and of the public as well, demand that termination of these proceedings, if reasonably possible, should be facilitated. This plan has the support of committees representing all of the classes of security holders which still have an interest in the properties. The security holders themselves, the owners of the properties, should have an opportunity to express their approval or rejection of the plan."

On submission of the plan to the six classes of bondholders which were held by the Court and the Securities and Exchange Commission to be entitled to participate the plan was overwhelmingly approved, the percentages of acceptances ranging from 96.78% to 98.80%.

The plan now before the Court is the sixth major attempt at reorganization. It has received the approval of the (1) District Court, (2) City Council of the City of Chicago, (3) Illinois Commerce Commission, (4) voters of Chicago, (5) Federal Works Administration, (6) Securities and Exchange Commission, (7) Surface Lines security holders participating in the plan, and (8) the affirmance of the Circuit Court of Appeals.

This is the first time in twenty years of unceasing effort that such united agreement has been achieved. It is not likely ever again to be duplicated.

Without doubt delay and the passage of time will permit the development of conditions that might jeopardize the consummation of this plan. The Transit Authority believes that, with the momentum now generated and with the interest evinced by bond-buying groups, it can in all probability sell its revenue bonds and bring this long history of traction litigation to an end, if the above time schedule be not interrupted.

To expedite the matter respondents are filing briefs in opposition to the petition within ten days or less of the first day on which their counsel saw a copy of the petition, and within a week or less of the date of formal service on them.*

Wherefore, respondents move, as above set forth, (a) the prompt disposition of the petition for certiorari; and (b) that leave be given to file printed copies of the opinion of the Circuit Court of Appeals.

Respectfully submitted,

WILLIAM J. FRIEDMAN and
MAURICE ROSENFIELD,
Counsel for Chicago City Railway Company and Calumet and South Chicago Railway Company First Mortgage Bondholders Protective Committees.

TAPPAN GREGORY and
ROBERT L. HUNTER,
Counsel for Chicago City and Connecting Railways Collateral Trust Bondholders Protective Committee.

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WERNER W. SCHROEDER,
Special Counsel for Chicago Transit Authority.

* Since drafting this motion respondents have received notice that some of petitioners have, at the end of the period allowed for appeal, filed a notice of appeal from the Order of Sale. Respondents will promptly move to dismiss that appeal.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

WERNER W. SCHROEDER, being first duly sworn, on oath deposes and says that he is Special Counsel for Chicago Transit Authority; and that he has prepared the foregoing motion.

Further on oath affiant says that the statements of fact therein made are true.

Further affiant saith not.

Werner W. Schroeder

Subscribed and Sworn to before me, a notary public, this 10.th day of April, A. D. 1947.

Jean P. Hearn
Notary Public.